

**ORIGINAL**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Definition of Markets for Purposes of the )  
Cable Television Mandatory Television )  
Broadcast Signal Carriage Rules )

CS Docket No. 95-178

Implementation of Section 301(d) of the )  
Telecommunications Act of 1996 )

Market Determinations )

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To: The Commission

**COMMENTS OF**  
**WRNN-TV ASSOCIATES LIMITED PARTNERSHIP**

WRNN-TV Associates Limited Partnership, the licensee of WRNN-TV, Kingston, New York ("WRNN"), by counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.45 (1995) hereby comments on the Further Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket.

In its NPRM, the Commission seeks comment on WRNN's proposal<sup>1/</sup> that in determining modifications of markets, stations that otherwise qualify for must-carry and pledge to provide concrete amounts of public interest programming receive added preference for full market-wide carriage irrespective of any other factors in a market modification analysis.<sup>2/</sup> In addition, the Commission solicits comment on any changes in the

<sup>1/</sup> See Reply Comments of WRNN-TV Associates Limited Partnership ("WRNN Reply Comments"), CS Docket No. 95-178, at 5-6 (February 26, 1996).

<sup>2/</sup> NPRM at n.133.

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modification process which are warranted to better effectuate the purposes of the must-carry requirements.<sup>3/</sup>

In these Comments, WRNN reiterates its position that the Commission should adopt WRNN's proposed modification to Section 76.59 of the Commission's rules so that stations which commit to serve communities with public interest programming -- a goal targeted by this Commission as critical in today's communications marketplace -- receive special preference in the Commission's market modification analyses. Such a change is necessary to ensure that the market modification process promotes localism and provides incentives for stations to deliver public interest programming to the communities in their markets. By adopting WRNN's proposal, the Commission will advance the widespread dissemination of information from a multiplicity of sources, promote fair competition, and preserve the benefits of free, over-the-air local broadcast television, better effectuating the purposes of the must-carry requirements.<sup>4/</sup>

### **BACKGROUND**

WRNN is a true must-carry success story. Must-carry, along with the related change in the copyright laws allowing for copyright-free carriage throughout a station's must-carry market,<sup>5/</sup> has paved the way for WRNN's carriage throughout the three states which

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<sup>3/</sup> NPRM at ¶¶s 52,53.

<sup>4/</sup> See *Turner Broadcasting v. FCC*, 910 F. Supp. 734, 751 (D.D.C. 1995), cert. granted, 116 S. Ct. 907 (Feb. 20, 1996); see also S. Rep. No. 92, 102d Cong., 1st Sess. 42 (1991) (absent must-carry, the local off-air broadcast system is endangered, thereby threatening diversity of choice).

<sup>5/</sup> Satellite Home Viewer Act of 1994, Pub. L. No. 103-369 § 3(b), 108 Stat. 3477, 3481 (1994), amending 17 U.S.C. § 111(f).

comprise its market -- New Jersey, New York and Connecticut.<sup>6/</sup> WRNN delivers original news and informational programming to approximately two million viewers throughout the market. WRNN has realized extraordinary gains in carriage and dramatically increased its local presence throughout its market as a direct result of the mandatory carriage rules.

After passage of the Satellite Home Viewer Act in late 1994, WRNN manifested its commitment to bolster the amount and type of local service it provides viewers throughout the market. Indeed, WRNN -- the regional news network -- has stepped up to the plate to utterly revolutionize the concept of local programming itself by providing an example to broadcasters nationwide in embarking upon, and realizing its dream to deliver vital news programming of acute interest to viewers in communities throughout the market. The must-carry rules and attendant copyright reform helped instill the goal of market-wide programming service to viewers in WRNN's paradigm. WRNN, recognizing the social obligations of broadcasters to provide viewers with valuable programming in order to serve the higher end of an informed viewing public for society, then embarked upon its mission.

With Congress and the Commission having armed smaller, independent stations like WRNN with the legal force to pursue and realize carriage from cable operators -- many of whom had discriminated against such stations prior to must-carry, blocking the development of independent, viable voices for the market -- WRNN spent countless hours meeting with New York ADI cable operators, showing tapes of its award-winning local news, public affairs and informational programming, and persuading these operators that WRNN was

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<sup>6/</sup> WRNN is located in the New York, NY television market (both Arbitron's Area of Dominant Influence ("ADI") and Nielsen's Designated Market Area ("DMA")) for the purposes of the must-carry rules.

attractive and permanent. WRNN backed up its legal rights with an investment of millions of dollars to realize its vision, and established itself as the New York ADI leader for regional news, dramatically increasing its cable carriage across the region in the process.

As cable carriage increases, WRNN expands the geographic scope of the program topics and enhances the ability of viewers to interact live with on-air personalities. Viewers access WRNN from across the ADI through vehicles such as Cyber-Cafe locations; a World Wide Web site; e-mail over the Internet; toll-free facsimile access; a direct modem access interactive bulletin board, and toll-free 800 phone lines allowing for live phone-in response to WRNN's call-in programs. (Over 35,000 calls each month are received on the station's 80 phone lines.) WRNN's increased carriage has meant obvious rewards for viewers throughout New York, New Jersey, and Connecticut in the form of original local interest programming, not available from any other broadcast source in the New York ADI.

WRNN constitutes the only news service which covers the entire New York, New Jersey, and Connecticut region with station-originated news and localized interactive talk programming responding directly to the needs and interests of these viewers. WRNN's full-service news bureaus located in Kingston, NY; Piscataway, NJ; and Stamford, CT allow WRNN to serve viewers throughout the region with substantial news and community interest programming, inspired by a formal ascertainment of market-wide community leaders, and unavailable from any other broadcast or cable television source.

WRNN broadcasts a full 49 1/3 hours per week of original, locally produced news, public affairs, sports, children's, informational and other locally-directed programming. Much of this airs in prime-time, and demonstrates WRNN's role as the New York market

leader for this type of programming. More so than other types of programming such as sitcoms or movies, news and public affairs programming serve as the most direct way a broadcaster can provide meaningful public service to the individual communities within its market.

Exemplifying WRNN's across-the-market service to viewers is WRNN's agreement with New Jersey's Ramapo College through which the station airs regularly town meetings from the college -- which feature open forum discussions between government officials, reporters from newspapers such as *The New York Times*, regional business leaders from companies such as IBM, AT&T, GM, and Allied Signal, a live audience, and viewers -- focusing on major issues facing New Jersey and the region. Topics of meetings aired on WRNN thus far have included such critical regional issues as economic downsizing in the tri-state area, and plans for a comprehensive transportation infrastructure to combat the transportation crisis plaguing New York, New Jersey and Connecticut. With Ramapo, WRNN plans to air extensive election night coverage, focusing on the region's election results, and their effects for viewers throughout the New York market. Additionally, in conjunction with Gannett, WRNN airs *Westchester Week*, a weekly round-table discussion featuring in-depth examination of major issues facing Westchester and Rockland Counties.

Apart from these examples, and WRNN's other extensive programming already chronicled in WRNN's Reply Comments,<sup>2/</sup> WRNN recently embarked on two new programming ventures which further exemplify the station's commitment to the region. First, on October 7, 1996, WRNN launched two additional half-hour newscasts,

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<sup>2/</sup> WRNN Reply Comments at 2.

concentrating on Hudson Valley and News Jersey news, which air live each weekday at 5 p.m. and 8 p.m., respectively, and are repeated nightly as well. Second, "Hudson Valley Journal Live," a weekly news magazine debuted October 11 at 6:30 p.m. on WRNN. The station also will implement a regional newscast for Westchester County on November 18, 1996.

Unfortunately, however, WRNN and other independent stations' continued ability to provide integral news and other local programming has been severely threatened by a spate of recent ADI market modification decisions in which the Commission has brought factors such as over-the-air signal coverage and historical carriage to the fore and relegated commitments by broadcasters to provide service to viewers through programming to the background in granting the cable operators' market modification petitions. The loser, of course, from these decisions is the viewing public, otherwise starved for public interest programming, and already sated with mass-produced, proprietary programming from their cable operators which does not begin to satisfy the public's appetite for localized programming. In order for WRNN to continue to deliver such outstanding service to its market and for the Commission to encourage similar programming from other stations, the Commission should adopt WRNN's proposal for changing market modification proceedings.

### **DISCUSSION**

In deciding modifications of markets for the purposes of the cable television mandatory television broadcast signal carriage rules, the Commission must ensure market-wide carriage of stations committed to broadcast locally produced news, children's and other public interest programming targeted to the communities comprising its market. By granting

such stations special preference to carriage, irrespective of other factors in a modification analysis (whether or not the Commission alters its framework for evaluating modification petitions<sup>8/</sup>) the Commission can best serve the public interest and buttress the policies underlying must-carry.

In its Reply Comments, WRNN explained that the market modification context is inextricably intertwined with the market definition being decided in this rulemaking.<sup>9/</sup> Consequently, changes to the definition of markets, as well as any new specific information submission requirements for modification proceedings, will have an important effect on the carriage rights realized by broadcasters. This, in turn, will directly alter the programming available on cable television systems in markets nationwide.

Congress and the Commission intended that "localism" serve as the cornerstone of the Commission's analysis for market modifications. In practice, however, the Commission's decision-makers have thus far failed to explicitly reward broadcasters for committing to provide substantial amounts of programming serving the public interest, even where stations promise to deliver valuable programming geared to the specific communities.<sup>10/</sup> Instead, in

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<sup>8/</sup> NPRM at ¶ 52.

<sup>9/</sup> WRNN Reply Comments at 4.

<sup>10/</sup> See, e.g., In re: Comcast Cablevision of Monmouth County, DA 96-825, CSR-4556-A (rel. May 31, 1996) at ¶ 23 (in evaluating market modification petitions, the Commission will not give credit for local service based on programming that might exist in the future). The Commission has consistently refused to give any probative value to stations' promises (contingent upon gaining carriage) to deliver programming specifically targeted to the relevant communities, and granted the cable operator's market modification petitions in the face of such promises. The Commission has done so even where the operator seeking the modification is the monopoly cable provider servicing the communities at issue. WRNN suggests that stations' promises to air programming contingent upon commencement of carriage should qualify as

deciding market modification petitions, the Commission has accorded equal or lesser probative value to a station's local news and other public interest programming as it has compared to the importance the Commission has placed upon other criteria such as over-the-air signal coverage. Thus, rather than using market modifications as a mechanism to promote local service, the Commission's application of these rules has degenerated into a de facto test of Grade B signal coverage, which alone does not reflect the amount of public service broadcasters actually provide a given community.

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local service under the modification analysis, and lead to a presumption of carriage rights.

Specifically, until a broadcaster is granted carriage on a system (where the station is not already carried on another system in that area), the station has little, if any, financial incentive to deliver programming targeted at areas where the station lacks carriage. The current system, however, punishes stations which do not air programming targeted to communities in which they do not yet have carriage. First, cable operators may refuse carriage of a station. Then, the operator can petition to modify that station's market to delete the communities it serves from the station's market. Next, the operator may cite the results of its refusal to carry the station: low ratings, lack of historical carriage, and little if any targeted programming. For the Commission to propagate this self-fulfilling prophecy by then granting the deletion petition -- rubber stamping the system's discrimination in refusing to carry the station -- frustrates the very goal which must-carry meant to promote: thwarting discrimination on the part of cable operators.

A contingent grant of carriage to a station, by contrast, tied to that station's airing responsive local programming, (i.e., refusing to modify a station's market where the station airs responsive programming to the communities or where the station promises to deliver such programming) would provide stations with the proper incentive to develop and air targeted local programming, without penalizing stations which have not yet realized carriage. In those cases where the station subsequently fails to deliver on its promises of local programming, the Commission could reserve its right to subsequently grant the deletion petition.



In an era when technology such as fiber optics, microwave relays, and translators renders the relevance of over-the-air signal coverage ancillary at best, programming must come to the fore in a market modification analysis. Congress never intended Grade B coverage to determine carriage rights. Rather, the replacement of Grade B contours with ADIs as the must-carry standard under the law demonstrates unequivocally that Grade B contours are not to be used as an absolute measure of the scope of a station's market. Stations are entitled to market-wide carriage in all areas within their market that they serve. The Commission's recent over-reliance on Grade B coverage at the expense of programming has served to undermine the very policies of content diversity and promotion of multiple sources of information which purportedly underlie must-carry.

By failing to afford appropriate weight to stations' local programming, the Commission's market modification decisions have not produced incentives for broadcasters to continue to develop public interest programming. Rather, by granting the operators' modification petitions, these decisions serve to reduce the total amount of service ultimately provided to the communities within a market. Instead of promoting localism, in cases where the given communities happen to lie outside the predicted Grade B contour of a station, or where a cable operator refused carriage of that station prior or subsequent to must-carry -- even if that station is dedicated to serve the communities with valuable programming -- the Commission has penalized such stations by granting the cable operators' market modification petitions.

As a result, the Commission should use this rulemaking to rectify the anomaly of earlier decisions in which the Commission has failed to adequately reward stations'

programming commitment to communities, by failing to preserve carriage rights, in an analysis meant to foster localism. Of all criteria considered, the unique value of local programming deserves special attention because rather than mechanically consider other criteria like historical carriage or over-the-air signal coverage, programming is the most direct and effective way a broadcaster can serve the viewers in its market. Thus, the Commission should give added preference for full market-wide carriage to stations pledging to provide concrete amounts of public interest programming.<sup>11/</sup>

### CONCLUSION

WRNN's proposal stands consistent with Chairman Hundt's recent remarks in which he stressed the need for creation of a social compact with broadcasters, and cited the must-carry regulations as an example of the cable industry's obligation to serve the public interest: ". . . [I]t is reasonable to put all media under some obligation to serve the public interest."<sup>12/</sup> Similarly, in the Capital Cities/ABC, Inc./Walt Disney Company merger decision, the Chairman emphasized the need for all of the Commission's rules to include mechanisms that "create clear and sufficient incentives for broadcasters to provide public

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<sup>11/</sup> WRNN does not suggest that the Commission dictate to broadcasters the specific programming that stations air. Rather, the station believes that the Commission (as it has done with children's programming) should simply broadly encourage stations to air programming which serves the public interest. The Commission can do so by using a station's commitment to deliver such programming as a determining factor in deciding market modification proceedings, which will best promote localism. The station may then decide in which form to deliver such programming -- i.e., news, children's, public affairs, etc.


<sup>12/</sup> See Remarks of Federal Communications Commission Chairman Reed E. Hundt, "Reinventing the Social Compact," September 24, 1996.

interest programming."<sup>13/</sup> By enacting WRNN's proposal, the Commission will deliver to broadcasters just such a clear incentive to provide public interest programming. In doing so, the Commission will take a bold, needed step toward forging this social compact with broadcasters to better serve the public.

Respectfully submitted,

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<sup>13/</sup> Capital Cities/ABC, Inc., Memorandum Opinion and Order, FCC 96-48 (released Feb. 8, 1996) (separate statement of Chairman Hundt at 5), as cited in WRNN Reply Comments at 4.